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Federal Communications Commission  
Office of the Secretary

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
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USCOC of Cumberland, Inc. )  
Hardy Cellular Telephone Company )  
 )  
Petition for Waiver of )  
Sections 54.809(c), 54.904(d), )  
54.313(d) and 54.314(d) )  
Of the Commission's Rules )

WC 08-71  
CC Docket No. 96-45

PETITION FOR WAIVER – EXPEDITED ACTION REQUESTED

USCOC of Cumberland, Inc. and Hardy Cellular Telephone Company (“U.S. Cellular”, the “Company”), by counsel and pursuant to Section 1.925(b) of the Commission's Rules, 47 C.F.R. §1.925, hereby submit this request for waiver of Sections 54.809(c), 54.904(d), and 54.313(d) and 54.314(d) of the Commission's rules, 47 C.F.R. §§ 54.809(c), 54.904(d), 54.313(d), 54.314(d).<sup>1</sup>

U.S. Cellular, a commercial mobile radio service (“CMRS”) provider that is a competitive eligible telecommunications carrier (“CETC”) in West Virginia, requests that the Commission waive the aforementioned rules to accept Interstate Access Support (“IAS”) and Interstate Common Line Support (“ICLS”) certifications to permit the Company to receive those categories of support from the date of its designation through June 30, 2008.

Because U.S. Cellular relies on uninterrupted universal service support to meet its ETC obligations and provide high-quality service to rural consumers, U.S. Cellular requests expedited treatment in accordance with Section 1.925(b)(4) of the Commission's rules.

<sup>1</sup> Pursuant to 0.457(d) and 0.459 of the Commission's rules, 47 C.F.R. Sections 0.457(d) and 0.459, U.S. Cellular has requested that certain material concerning its build plans be given confidential treatment. A request for confidential treatment, along with an unredacted version of this filing is being hand-delivered to the Commission on

## I. BACKGROUND AND INTRODUCTION

U.S. Cellular's parent company, through its licensed subsidiaries, has been designated as a CETC in Illinois, Iowa, Kansas, Maine, Missouri, Nebraska, Oklahoma, Oregon, Washington, West Virginia, and Wisconsin. In addition, effective August 1, 2008, U.S. Cellular's affiliates have been designated as an ETC by the Commission in New Hampshire, North Carolina, Virginia and New York. On February 25, 2008, U.S. Cellular obtained ETC status from the Public Service Commission of West Virginia ("WVPSC") in areas served by Verizon West Virginia, Inc., Citizens Telecommunications Company of West Virginia d/b/a Frontier Communications of West Virginia, Hardy Telephone Company, Spruce Knob Seneca Rocks Telephone Company, and West Side Telephone Company.<sup>2</sup>

As a result of its designation, U.S. Cellular became eligible to receive high-cost loop support ("HCLS"), high-cost model support ("HCMS"), safety net additive support ("SNA"), local switching support ("LSS") interstate access support ("IAS") and interstate common line support ("ICLS"). Such support assists U.S. Cellular in providing a quality universal service offering to the underserved rural communities and enables it to construct new facilities in these areas pursuant to the build-out commitments it made to the WVPSC in applying for ETC status.<sup>3</sup>

Pursuant to the FCC's rules, U.S. Cellular and the WVPSC were required to undertake a series of initial filings in order to enable U.S. Cellular to receive support from the high-cost program as of the date of its designation. Under Section 54.307(d) of the Commission's Rules, U.S. Cellular was required to file its initial line counts within 60 days of the effective date of its

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this date.

<sup>2</sup> USCOC of Cumberland, Inc., and Hardy Cellular Telephone Company, Case No. 07-2031-C-PC (W.V. PSC, Feb. 25, 2008)("WVPSC Order").

<sup>3</sup> See Petition of USCOC of Cumberland, Inc. and Hardy Cellular Telephone Company for Designation as an Eligible Telecommunications Carrier, Case No. 07-203/T-PC at p. 13 and Exh. E (filed Oct. 19, 2007)("Petition").

designation by the WVPSC. U.S. Cellular submitted these filings on March 17-27, 2008. In addition, under Sections 54.313 and 54.314 of the Commission's Rules, a rural/nonrural use certification was required to be filed by the WVPSC within 60 days of the effective date of the designation. U.S. Cellular coordinated the preparation and filing of the initial rural/nonrural use certification with WVPSC staff, and the filing was made with the FCC and USAC in a timely manner.

Finally, under Sections 54.809(c) and 54.904(d) of the Commission's Rules, U.S. Cellular is required to file its initial IAS and ICLS certifications on a schedule set forth therein. Although the Commission's rules governing these certifications do not require a filing to be made within 60 days of the effective date of designation, U.S. Cellular understands that the Commission has effectively required designees to file such certifications within that time period.<sup>4</sup>

The Company intended to file the initial IAS and ICLS certifications when it filed its initial line counts in March 2008. However, due to an administrative oversight, the initial IAS and ICLS certifications were not filed at that time. The oversight occurred as a result of U.S. Cellular's regulatory compliance staff being severely overburdened during the month of March, primarily because of an audit conducted on behalf of the Universal Service Administrative Company ("USAC") into U.S. Cellular's compliance with line-count reporting and other ETC-related requirements. The audit covered four separate states in which the Company is a CETC.<sup>5</sup>

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<sup>4</sup> See, e.g., *Sagebrush Cellular, Inc.*, 22 FCC Rcd 15139, 15140 (2007) ("*Sagebrush Waiver Order*") ("After the expiration of the 60-day period within which newly-designated ETCs must file their information with USAC, Sagebrush was informed by USAC that USAC had not received Sagebrush's self-certification pursuant to section 54.904(d) of the Commission's rules.") (footnote omitted).

<sup>5</sup> U.S. Cellular has been informed that this audit is part of a broader campaign by USAC to audit 390 ETCs around the country.

The Company was notified of the audit by telephone and in writing on March 6, 2008, and was instructed to provide responses to document and data requests by March 21, 2008, in anticipation of the commencement of audit field work on April 7, 2008.

The audit was extremely time and labor-intensive for the Company's personnel who are responsible in the ordinary course for compliance with USAC deadlines and other regulatory mandates. In responding to the auditor's requests, the Company's regulatory accounting and compliance staff were obliged to engage in a time-consuming review of billing database entries from various time periods dating as far back as 2005. Moreover, in some cases, the audit request required the Company's personnel to regenerate past billing reports, since the Company had not previously been required to prepare and deliver customer data in the specific form requested by the auditor. Also, data for two quarters for all four states under audit had to be restored from backup tapes as the data stored on local media devices was found to be corrupt and unusable. The auditors were on site at the U.S. Cellular office during the week of April 28. The Company's regulatory accounting and compliance staff spent significant time guiding the auditors through the Company's line count filing processes, assisting the auditors with billing system queries and working with the auditors to complete the audit in a timely manner.<sup>6</sup>

At the time of the missed filing, U.S. Cellular regulatory accounting and compliance personnel were also addressing a number of unforeseen data requests from various regulatory agencies. A partial list of said requests includes revisions to enhanced wireless 911 filings for the State of Nebraska, an audit by the State of Kansas of contributions to the Kansas Universal Service Fund, preparation for a Lifeline site visit by Universal Service Administrative Company personnel, the first time preparation and filing of a new ETC annual certification report in the

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<sup>6</sup> The Company has attached hereto as Exhibit A, a declaration under penalty of perjury of Jeffrey Sorensen, Regulatory Accounting Supervisor, who is the person responsible for processing U.S. Cellular's line count and

State of Iowa, fielding and responding to data requests in an Oklahoma universal service proceeding.

Additionally, U.S. Cellular's regulatory accounting and compliance organization had been understaffed throughout late 2007 and early 2008 due to a sudden departure of a key staff member. A new staff member, who had no previous regulatory accounting or compliance experience, had been hired into the organization in mid-February 2008. During the time period that the overlooked certification filings were to be filed, members of U.S. Cellular's regulatory accounting and compliance organization were committing significant time and effort to train the new staff member as to organizational processes and the unique issues, processes and requirements related to regulatory filings.

Over the many years as a CETC in a number of states, U.S. Cellular has submitted literally hundreds of line count and certification filings with the FCC and USAC. It has never before failed to meet a line count or certification filing deadline due to an oversight. Furthermore, as described in the Declaration attached hereto as Exhibit A, the Company has taken measures to ensure that deadlines are not missed when similar circumstances arise in the future.

Accordingly, if the FCC finds that an IAS/ICLS certification should have been filed within 60 days, U.S. Cellular believes good cause exists to waive that requirement. If the FCC finds that the rules do not require a certification to be filed within 60 days, then U.S. Cellular requests a waiver in the ordinary course. U.S. Cellular's petition for ETC status was filed on October 19, 2007, and it was therefore impossible for the company to file a certification with the FCC on June 30, 2007, before the filing of its petition for ETC status. Previously, the FCC has

granted waivers to U.S. Cellular and to numerous other ETCs in similar circumstances on the same grounds.<sup>7</sup>

## II. APPLICABLE RULES

The FCC rules sections involved in this request for waiver is as follows:

- Sec. 54.809(c): In order for a price cap local exchange carrier or an eligible telecommunications carrier serving lines in the service area of a price cap local exchange carrier to receive interstate access universal service support, such carrier shall file an annual certification, as described in paragraph (b) of this section, on the date that it first files its line count information pursuant to Sec. 54.802, and thereafter on June 30 of each year. Such carrier that files its line count information after the June 30 deadline shall receive support pursuant to the following schedule:
  - (1) Carriers that file no later than September 30 shall receive support for the fourth quarter of that year and the first and second quarters of the subsequent year.
  - (2) Carriers that file no later than December 31 shall receive support for the first and second quarters of the subsequent year.
  - (3) Carriers that file no later than March 31 of the subsequent year shall receive support for the second quarter of the subsequent year.
- Section 54.904(d): In order for a rate-of-return carrier, and/or an eligible telecommunications carrier serving lines in the service area of a rate-of-return carrier, to receive Interstate Common Line Support, such carrier must file an annual certification, as described in paragraph (b) of this section, on the date that it first files its line count information pursuant to Sec. 54.903, and thereafter on June 30th of each year.
- Section 54.313(d): In order for a non-rural incumbent local exchange carrier in a particular State, and/or an eligible telecommunications carrier serving lines in the service area of a non-rural incumbent local exchange carrier, to receive federal high-cost support, the State must file an annual certification, as described in paragraph (c) of this section, with both the Administrator and the Commission. Support shall be provided in accordance with the following schedule:

[ . . . ]

  - (vi) Newly designated eligible telecommunications carriers. Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support pursuant to Sec. 54.309 or Sec.

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<sup>7</sup> See fn. 29, *infra*.

**54.311, whichever is applicable**, as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d) of this section. (emphasis added)

- Section 54.314(d): the filing of the certification described in paragraph (c) of this section, support shall be provided pursuant to the following schedule:

[ . . . ]

(6) Newly designated eligible telecommunications carriers. Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support pursuant to **Sec. 54.301, 54.305, or Sec. 54.307** or part 36 subpart F of this chapter, whichever is applicable, as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d) of this section. (emphasis added).

### **III. A WAIVER OF THE COMMISSION'S 60-DAY INITIAL IAS AND ICLS CERTIFICATION DEADLINES IS WARRANTED**

The Commission has authority to waive its rules whenever there is "good cause" to do so. 47 C.F.R. 1.3; 1.925. Among other things, the Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest. *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969) ("*WAIT Radio*"). As further explained in *WAIT Radio*, the Commission is charged with administration of its responsibilities consistent with the "public interest." That an agency may discharge its responsibilities by promulgating rules of general application which, in the overall perspective, establish the "public

interest” for a broad range of situations, does not relieve it of an obligation to seek out the “public interest” in particular, individualized cases. In fact, the Commission’s right to waive its rules is not unlike an obligation in that it is a *sine quo non* to its ability to promulgate otherwise rigid rules. It is the necessary “safety valve” that makes the system work. See *WAIT Radio* at 1157, 1159.

**A. U.S. Cellular’s Filing Omission Was a Result of Unique Circumstances.**

A grant of U.S. Cellular’s requested waiver is justified by the unique circumstances it faced during the weeks following its designation as an ETC in West Virginia. During that time, the personnel responsible for the Company’s line count and certification filings were distracted by the burdensome data review and preparation tasks made necessary by the USAC audit of its ETC activities in multiple states. Because of the restrictive timetable for responding to the auditors’ request for a large volume of data, which included gathering, organizing, and in some cases, regenerating, data that was not readily available, U.S. Cellular’s regulatory compliance personnel were unable to devote the necessary attention to double-checking their initial ETC filings for West Virginia and verifying that each line count and certification had been completed and filed in a timely manner.

U.S. Cellular takes its regulatory obligations very seriously, and it has a very solid track record of compliance with state and Commission ETC mandates. Prior to this omission, it had never missed a line count or certification deadline due to an oversight. In this case, the Company worked to the best of its ability to make the requisite filings, and it completed virtually all of them. The Company made the necessary system updates and database queries to prepare and file multiple sets of line counts within the 60-day window for initial filings provided in the Commission’s rules. The Company worked with the state commission to ensure that it timely



filed the appropriate initial rural/nonrural use certification for HCL, HCM, LSS, and SNA support. The Company only neglected to file two one-page certifications to cover the remaining categories of support.

The Commission has granted similar requests in which a USF deadline was missed due to a clerical oversight arising from disruptions within the filer's company.<sup>8</sup> In the *MCI Waiver Order*, for example, the Commission granted a waiver of three line count filing deadlines and one certification filing deadline, all of which had occurred as the company "'was in the midst of its transition from bankruptcy and was experiencing considerable work force reductions with an inability to re-staff personnel.'"<sup>9</sup> The Commission also granted a waiver of the line count deadline set forth in Section 54.307(c) to Northeast Iowa Telephone Company, which filed its line counts late due to an administrative oversight ascribed to its general manager being on vacation.<sup>10</sup> While the Commission has denied waiver requests where the filer had merely asserted it was confused about the deadline or had misinterpreted the rule,<sup>11</sup> U.S. Cellular asserts no such confusion. Rather, the oversight in this case was due to the unexpected redirection of key personnel to other significant tasks, which the FCC has previously held to constitute unique circumstances warranting a waiver of the rules.<sup>12</sup>

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<sup>8</sup> See, e.g., *Valor Telecommunications of Texas, L.P.*, 21 FCC Rcd 249 (2006) ("*Valor Waiver Order*"); *Benton /Linn Wireless et al.*, 20 FCC Rcd 19212 (2005) ("*Benton/Linn Waiver Order*"); *Smith Bagley, Inc.*, 16 FCC Rcd 15275 (2001).

<sup>9</sup> *MCI, Inc.*, 21 FCC Rcd 14926, 14928 (2006) ("*MCI Waiver Order*").

<sup>10</sup> See *Benton/Lynn Waiver Order*, *supra*, 20 FCC Rcd at 19215-16.

<sup>11</sup> See, e.g., *Corr Wireless Communications, LLC*, 22 FCC Rcd 5000, 5002 (2007) ("*Corr Waiver Order*"); *South Slope Coop. Tel. Co.*, 19 FCC Rcd 17493, 17944-45 (2004).

<sup>12</sup> See, e.g., *NPCR, Inc.*, 22 FCC Rcd 560, 561 (2007) ("*Nextel Waiver Order*") (oversight due to redirection of staff to address matters related to merger with Sprint); *Verizon Communications, Inc.*, 21 FCC Rcd 10155, 10156 (2006) (departmental reorganization directly affecting employees responsible for universal service filings); *Dixon Tel. Co. et al.*, 21 FCC Rcd 1717, 1718 (2006) (department head was out on medical leave and a critical e-mail was overlooked or deleted as a result); *Fibernet LLC*, 20 FCC Rcd 20316, 20317 (2005) ("*Fibernet Waiver*").

Moreover, as discussed in the Declaration attached as Exhibit A, the company has instituted policies and procedures to ensure deadlines are observed should similar disruptions occur in the future.<sup>13</sup>

**B. The Support at Issue is Critical for the Provision of Service in Rural West Virginia.**

The interruption of support to U.S. Cellular for one calendar quarter would not be in the public interest or serve the underlying purpose of the rule. According to USAC staff, U.S. Cellular will forgo approximately \$1.56 million in IAS and ICLS if a waiver is not granted. In its Petition to the WVPSC, U.S. Cellular described its plans to use high-cost support in its first five years as an ETC to improve the coverage and capacity of its wireless service in rural West Virginia, including its plans to build { } new cell sites across its ETC service area. U.S. Cellular committed to report annually to the WVPSC on its progress in advance of its recertification for the following year's high-cost support.

The Company also stated that, as it makes progress on its build-out plans, it will immediately satisfy its obligation to offer and advertise the supported services throughout its ETC service area by engaging in the six-step service provisioning process in response to consumer requests for service.<sup>14</sup> All of these ETC commitments will be significantly and adversely affected if U.S. Cellular is forced to forgo \$1.56 million of IAS and ICLS, to which it would otherwise be entitled for its first four months as an ETC.

The Commission has previously granted waivers of universal service filing deadlines to companies that need high-cost support for "the continued provision of service, as well as system

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Order")(resignation of key employee); *Alliance Communications Cooperative, Inc. et al.*, 20 FCC Rcd 18250, 18251 (2005)(disruption of accounting staff caused by corporate reorganizations and reassignments).

<sup>13</sup> See *Nextel Waiver Order*, *supra*, 22 FCC Rcd at 563.

<sup>14</sup> See Petition at Exhibit E.

construction and upgrades.”<sup>15</sup> If a waiver is not granted in this case, U.S. Cellular will be forced to forgo \$1.56 million in funding, which is more than half of the total estimated support for which it is eligible through June 30, 2008.<sup>16</sup> Indeed, this amount is comparable to the amount of support at stake in the order granting Valor Telecommunications of Texas, L.P.’s request for waiver, in which the FCC concluded:

We find that the loss of approximately \$1.5 million in IAS funding could cause significant hardship in the rural and high-cost areas served by Valor. We are concerned that the loss of such a substantial amount of IAS funding could undermine Valor’s investments in its network, and thus its ability to ensure that customers have and maintain access to adequate services.<sup>17</sup>

For competitive ETCs such as U.S. Cellular, uninterrupted high-cost support is crucial for constructing and upgrading its network in rural areas. The Commission has previously concluded that it is in the public interest for CETCs to use high-cost support to attain a level of service that provides consumers in high-cost areas with a viable alternative to wireline incumbent LEC service.<sup>18</sup> The Commission has also emphasized the critical public-safety benefits of wireless carriers using high-cost support to improve coverage and service quality in

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<sup>15</sup> *MCI Waiver Order, supra*, 21 FCC Red at 14929, quoting *Citizens Communications and Frontier Communications*, 20 FCC Red 16761, 16764 (2005) (“*Citizens Waiver Order*”).

<sup>16</sup> According to estimates provided by USAC staff, U.S. Cellular is projected to receive approximately \$2.7 million for time periods between its designation and June 30, 2008.

<sup>17</sup> *Valor Waiver Order, supra*, 21 FCC at 252 (footnote omitted). See also *MCI Waiver Order, supra*, 21 FCC Red at 14929 (finding that the loss of approximately \$1.5 million in IAS “could undermine MCImetro’s future ability to serve customers in the high-cost areas of New York.”),

<sup>18</sup> See *North Carolina RSA 3 Cellular Tel. Co.*, 21 FCC Red 9151, 9156 (2006) (“We find Carolina West’s universal service offering will provide a variety of benefits to customers including consumer choice and advantageous service offerings. For instance, universal service support will enable Carolina West to construct facilities to improve quality of service and extend telephone service to people who have no choice of telephone provider.”)

remote and isolated areas.<sup>19</sup> The WVPSC made similar findings in granting ETC status to U.S. Cellular.<sup>20</sup>

U.S. Cellular has committed to use its high-cost support to provide these benefits. If it is forced to forgo the \$1.56 million associated with the filings at issue here, U.S. Cellular will be constrained to cancel or delay the construction of facilities that would bring improved service to the communities of { } and { }, West Virginia, along with associated network improvements.

In concluding that U.S. Cellular's designation is in the public interest, the WVPSC made specific reference to U.S. Cellular's commitment to use its high-cost support to make critical network improvements:

Given the commitment of U.S. Cellular to utilize USF funding to greatly improve its service to rural or remote areas in West Virginia through the enhancement of its network through the operation of additional cell towers, the provision of advanced services and enhanced competitive telecommunications services, it is reasonable to conclude that the granting of ETC status to U.S. Cellular is in the public interest of the consumers of telecommunications services within U.S. Cellular's service territory.<sup>21</sup>

A grant of this waiver request is essential for U.S. Cellular "to continue uninterrupted its efforts to maintain and promote access to quality services in its rural and high-cost areas."<sup>22</sup> It does not

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<sup>19</sup> See *Corr Wireless Communications, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, 21 FCC Rcd 1217, 1226 (2006) ("The mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other locations. The availability of a wireless universal service offering also provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.")

<sup>20</sup> WVPSC Order at p. 12 ("The availability of high-quality wireless service is especially important for health and safety reasons in rural areas where wireline service may be physically unavailable and the availability of wireless service will provide access to emergency services that are not otherwise available due to the isolation connected with living in rural areas.")

<sup>21</sup> *Id.* at p. 13.

<sup>22</sup> *MCI Waiver Order, supra*, 21 FCC Rcd at 14929.

serve West Virginia consumers for planned improvements to be cancelled or delayed because a certification was not filed within 60 days.<sup>23</sup>

U.S. Cellular is offering universal service to consumers in rural West Virginia, and is actively working to advance Lifeline and Link-Up subscribership in the state. As discussed above, U.S. Cellular has made specific build-out commitments to the WVPSC through 2012. Given that U.S. Cellular has taken on the responsibilities of an ETC, it would be unfair to strictly apply a rule that would force the company and its subscribers to forgo several months of funding. No other party will be prejudiced by a grant of this waiver request and consumers in rural West Virginia who are expecting continued and rapid deployment of facilities would be harmed by its denial.

**C. A Waiver Could be Critical in Light of the Recently Adopted CETC Cap.**

Absent a waiver of the IAS and ICLS initial certification deadlines, application of the 60-day initial certification deadlines under these unique circumstances could disproportionately penalize U.S. Cellular and all other CETCs in the state of West Virginia. In its *CETC Cap Order*, the FCC determined that the cap would be based “at the level of support [CETCs] were eligible to receive during March 2008 on an annualized basis.”<sup>24</sup>

The FCC summarized the operation of the cap as follows:

Under the state-based cap, support will be calculated using a two-step approach. First, on a quarterly basis, the Universal Service Administrative Company (USAC) will calculate the support each competitive ETC would have received under the existing (uncapped) per-line identical support rule, and sum these amounts by state. Second, USAC will calculate a state reduction factor to reduce this amount to the competitive ETC cap amount. Specifically, USAC will compare the total amount of uncapped support to the cap amount for each state.

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<sup>23</sup> See *Fibernet Waiver Order*, *supra*, 20 FCC Red at 20318.

<sup>24</sup> *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45 at ¶ 7 (2008) (“*CETC Cap Order*”).

Where the total state uncapped support is greater than the available state cap support amount, USAC will divide the state cap support amount by the total state uncapped amount to yield the state reduction factor. USAC will then apply the state-specific reduction factor to the uncapped amount for each competitive ETC within the state to arrive at the capped level of high-cost support. Where the state uncapped support is less than the available state capped support amount, no reduction will be required.<sup>25</sup>

Should the FCC determine that the capped amount for West Virginia does not include the amount of IAS and ICLS U.S. Cellular was eligible to receive in March 2008, all CETCs in the state, and by extension consumers, will be significantly and adversely affected. In future quarters, when USAC makes its “two-step” calculation as described above, the total state uncapped support for West Virginia would be greater than the total state capped support because the uncapped support would include the IAS and ICLS support amounts due to U.S. Cellular in such future periods. USAC would then calculate the state reduction factor by dividing the state cap support amount by the total state uncapped amount and apply the resulting factor to the uncapped amount for each CETC within the state. This process would continue for each quarter while the FCC considers long-term reform.

According to estimates provided by USAC staff, U.S. Cellular would have received approximately \$430,000 in IAS and ICLS support for March 2008. This represents approximately **23 percent** of all CETC support in West Virginia for that time period. Because of the operation of the cap, the nonpayment of \$430,000 to West Virginia in March 2008 would reduce support to all West Virginia CETCs by at least 23 percent in future quarters. Based on third quarter 2008 projections, U.S. Cellular estimates that it will forgo nearly \$2 million per year in high-cost support if the lost IAS and ICLS support at issue in this Petition is excluded from the base cap amount. As a result, U.S. Cellular would be forced to cancel or significantly

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<sup>25</sup> *Id.* at ¶ 27.

delay construction of at least { } of the sites it proposed to build in rural West Virginia with its high-cost support.<sup>26</sup> Thus, a decision not to grant a waiver in this case would negatively impact not only the Company but all CETCs in West Virginia while the CETC cap is in place.

Accordingly, the imposition of the cap under these circumstances raises grave public interest concerns and consequences which the Commission's rules did not contemplate. Absent grant of this waiver, U.S. Cellular is concerned that the state cap amount would not properly take into account the amount of support the Company should have received during March of 2008, but did not, due to the inadvertent error which resulted in the non-submission of the initial certifications. The Company and the other CETCs within the state rely on the receipt of universal service support to provide high-quality telecommunications services to rural communities. Calculating the amount of the cap for the state of West Virginia by excluding these funds due to an inadvertent error would deprive U.S. Cellular, the other CETCs, and consumers in the state of these vital funds which are needed to maintain and expand these services in rural communities.

**D. USAC Will Not Be Administratively Burdened by a Grant of This Request.**

USAC will not be prejudiced by the late filings. Because U.S. Cellular timely filed all of its initial line counts for West Virginia, the IAS and ICLS amounts to which U.S. Cellular would otherwise be entitled have already been calculated and included with USAC's published projections.<sup>27</sup> Throughout the month of June, U.S. Cellular was in frequent contact with USAC staff in anticipation of receiving its first payment from the high-cost portion of the USF for its West Virginia ETC service area. In a series of telephone and electronic communications, USAC staff gave estimates for the initial payment of various support categories, including IAS and

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<sup>26</sup> The sites at issue are located in { }.

<sup>27</sup> See High Cost Appendix HC01, Third Quarter 2008, at [www.usac.org](http://www.usac.org).

ICLS. U.S. Cellular did not understand that it had missed a certification filing deadline until USAC published its disbursement information during the week of June 26, prompting U.S. Cellular to make the certification filings and submit this waiver request.

Accordingly, although all of the quoted estimates were subject to the requisite certifications being in place, USAC has processed the line counts and prepared the amounts for disbursement. U.S. Cellular therefore submits that USAC would not be subject to any substantial additional burdens if the FCC instructed it to proceed with the disbursement of the amounts it has already prepared.<sup>28</sup>

#### **IV. IN THE ALTERNATIVE, THE COMMISSION SHOULD GRANT A WAIVER BECAUSE IT IS NOT CLEAR WHETHER THE 60-DAY INITIAL FILING PERIOD APPLIES TO IAS AND ICLS**

In the alternative, U.S. Cellular requests that the Commission grant a waiver of Sections 54.809(c) and 54.904(d) of its rules, which require annual certifications for IAS/ICLS for 2008 to be filed on June 30, 2007. Because U.S. Cellular's petition for ETC status was filed in West Virginia on October 19, 2007, U.S. Cellular could not have filed its annual certification for 2008 on or before June 30, 2007.<sup>29</sup> In fact, on June 30, 2007, U.S. Cellular had not yet definitively determined whether it would file a petition for ETC status in West Virginia. The FCC has granted requests for waiver by U.S. Cellular and numerous other ETCs in identical circumstances.<sup>30</sup>

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<sup>28</sup> See *Citizens Waiver Order*, *supra*, 20 FCC Rcd at 16764.

<sup>29</sup> See *Cellular South Licenses, Inc.*, 22 FCC Rcd 5658, 5660 (2007) ("Cellular South Waiver Order") ("Cellular South did not receive its ETC designation until September 23, 2004. Therefore, it could not have met the June 30, 2004, [ICLS] certification deadline.")

<sup>30</sup> See, e.g., *Public Notice, "The Telecommunications Access Policy Division of the Wireline Competition Bureau Grants Petitions Requesting Waiver of Various Filing Deadlines Related to the Universal Service Program"*, 19 FCC Rcd 16121 (2004); *Western Wireless Corp.*, 18 FCC Rcd 14689 (2003); *Benton/Linn Waiver Order*, *supra*; *RFB Cellular, Inc.*, 17 FCC Rcd 24387 (2002) ("RFB Waiver Order"); *Grande Comm's*, 19 FCC Rcd 15580 (2004); *Guam Cel. & Paging*, 18 FCC Rcd 7138 (2003); *Midwest Wireless Iowa, LLC*, 19 FCC Rcd 10484 (2004); *N.E. Colo. Cellular Inc.*, 18 FCC Rcd 15597 (2003); *Public Notice, "The Telecommunications Access*



U.S. Cellular requests this alternative relief because the Commission's rules requiring certifications to be filed within 60 days of designation as an ETC, apply only to Sections 54.313(d) and 54.314(d) of the Commission's rules, which govern non-rural and rural use certifications, respectively. The certifications governed by 54.313(d) and 54.314(d) only pertain to HCLS, HCMS, LSS, and certain other categories of support but do not pertain to IAS or ICLS.

On their face, 54.809(c) and 54.904(d) do not require a filing for IAS or ICLS within 60 days of designation. Moreover, the Commission's *ETC Report and Order*, which adopted the 60-day rule for Sections 54.313(d) and 54.314(d), does not mention either Section 54.809(c) or 54.904(d) of the rules pertaining to IAS and ICLS.<sup>31</sup> U.S. Cellular understands that the Commission has received and granted at least one waiver of a 60-day filing deadline for ICLS, which would appear to indicate that the filing party and the Commission believe that such a deadline exists for ICLS.<sup>32</sup> However, the rules governing IAS and ICLS certifications do not include any 60-day period.

In the absence of a 60-day filing window from the rules governing IAS and ICLS certifications, U.S. Cellular submits that a waiver of the IAS and ICLS certification rules would be justified on the compelling grounds that the deadline for filing the certifications providing for support from the date of designation through June 30, 2008, occurred on June 30, 2007, prior to U.S. Cellular's designation by the WVPSC. As the Wireline Competition Bureau has previously concluded, "it would be onerous . . . to deny an ETC receipt of universal service support for

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*Policy Division of the Wireline Competition Bureau Grants Petitions Requesting Waiver of Various Filing Deadlines Related to the Universal Service Program*, 21 FCC Rcd 9143 (2006); *Corr Waiver Order*, *supra*; *Centennial Tri-State Operating Partnership and Centennial Claiborne Cellular Corp.*, 21 FCC Rcd 9170 (2006).

<sup>31</sup> See *Federal-State Joint Board on Universal Service, Report and Order*, 20 FCC Rcd 6371 (2005) ("*ETC Report and Order*").

<sup>32</sup> See *Sagebrush Waiver Order*, *supra*, 22 FCC Rcd at 15140 (granting waiver of ICLS certification rules where initial ICLS certification was filed "[a]fter the expiration of the 60-day period within which newly-designated

almost two quarters as a result of a particular ETC designation having occurred after the certification filing deadline.”<sup>33</sup> The Bureau has also concluded that denying high-cost support to the newly-designated ETC merely because of the timing of its ETC designation would undermine the FCC’s well-established goal of competitive neutrality for universal service.<sup>34</sup> To avoid such onerous results, “[t]he Bureau has granted numerous petitions filed by newly designated ETCs who . . . could not have met filing deadlines that occurred prior to their ETC designation date.”<sup>35</sup>

Because the IAS and ICLS certification rules do not set forth a 60-day window for initial filings, and because the timing of U.S. Cellular’s designation precluded the filing of IAS and ICLS certifications on or before June 30, 2007, U.S. Cellular requests a waiver of Sections 54.809(c) and 54.904(d) consistent with Commission precedent.

#### **V. REQUEST FOR RELIEF**

Given the hardship that West Virginia’s consumers would suffer as a result of the lost support, the steps U.S. Cellular has taken to ensure it will not miss similar deadlines in the future, and the absence of undue administrative burden on USAC, “strict enforcement of the filing deadline would disproportionately penalize” consumers.<sup>36</sup>

For the foregoing reasons, U.S. Cellular respectfully requests that the Commission:

1. Expeditiously grant this petition and waive the application of the filing deadlines for the initial IAS and ICLS certifications;

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ETCs must file their information with USAC”).

<sup>33</sup> *Western Wireless Waiver Order, supra*, 18 FCC Rcd at 14692.

<sup>34</sup> *RFB Waiver Order, supra*, 17 FCC Rcd at 24390.

<sup>35</sup> *Cellular South Waiver Order, supra*, 22 FCC Rcd at 5660.

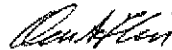
<sup>36</sup> *Nextel Waiver Order, supra*, 22 FCC Rcd at 562.

2. Direct USAC to treat as timely filed the initial IAS and ICLS certifications which U.S. Cellular submitted on June 26, 2008, so that USAC can process and distribute the funds that would have been available to the Company from February 25, 2008 through June 30, 2008; and

3. Include the monthly amount of IAS and ICLS in the calculation of the CETC cap amount for the state of West Virginia. Even absent a grant of this waiver request, the funding should be restored for purposes of calculating the interim cap amount for West Virginia.

Respectfully submitted,

**USCOC OF CUMBERLAND, INC.  
HARDY CELLULAR TELEPHONE COMPANY**



By: \_\_\_\_\_

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July 18, 2008

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

<b>In the Matter of</b>	)	
	)	
<b>USCOC of Cumberland, Inc and</b>	)	
<b>Hardy Cellular Telephone Company</b>	)	
	)	<b>CC Docket No. 96-45</b>
<b>Petition for Waiver of</b>	)	
<b>Sections 54.809(c), 54.904(d),</b>	)	
<b>54.313(d) and 54.314(d)</b>	)	
<b>Of the Commission's Rules</b>	)	

**DECLARATION OF JEFFREY SORENSEN**

1. My name is Jeffrey Sorensen. My business address is 8410 W. Bryn Mawr, Chicago, Illinois 60631-3486. I am the Regulatory Accounting Supervisor for United States Cellular Corporation ("U.S. Cellular" or the "Company"). My current responsibilities include supervision of the preparation of certain regulatory filings and related supporting activities including accounting and compliance, as well as advising the Vice President of Legal and Regulatory Affairs on various matters. I personally prepare and file all certifications on behalf of the Company.

2. U.S. Cellular fully appreciates the importance of filing line counts, certifications, and other required submissions in a timely manner to permit the Universal Service Administrative Company ("USAC") to carry out its functions. Until this year, U.S. Cellular had never had an oversight that resulted in failure to meet a deadline for such filings. Indeed, U.S. Cellular has a solid record of compliance with deadlines and other rules and regulations adopted by the FCC and state regulatory commissions.

3. Earlier this year, U.S. Cellular failed to timely file its initial Interstate Access Support ("IAS") and Interstate Common Line Support ("ICLS") certifications. The Company

intended to file the initial IAS and ICLS certifications when it filed its initial line counts in March 2008. However, due to an oversight, the certifications were not filed.

4. The oversight resulted from my being tasked with responding to set of document and data requests in connection with an audit conducted on behalf of the Universal Service Administrative Company ("USAC"). On Thursday, March 6, I was contacted via telephone and in writing by an auditing firm that was conducting an audit of U.S. Cellular's ETC reporting and compliance in four different states. We were instructed to provide responses to document and data requests by March 21, 2008, in anticipation of field work by the auditors to commence in early April.

5. The audit was extremely time-and labor-intensive for me and for other personnel who are responsible for meeting USAC deadlines and handling other regulatory compliance items. In responding to the auditor's requests, I oversaw a time-consuming review of billing database entries from various time periods dating as far back as 2005. In some cases, the audit request required us to recreate past billing reports, since we had never been required to prepare or maintain billing data in the form requested by the auditor. Also, data for two quarters for all four states under audit had to be restored from backup tapes as the data stored on local media devices was found to be corrupt and unusable. The auditors were on site at our office during the week of April 28. Our regulatory accounting and compliance staff spent significant time guiding the auditors through the Company's line count filing processes, assisting the auditors with billing system queries and working with the auditors to complete the audit in a timely manner.

6. At the time of the missed filing, my regulatory accounting and compliance staff and I were also addressing a number of unforeseen data requests from various regulatory agencies. These included revisions to enhanced wireless 911 filings for the State of Nebraska, an

audit by the State of Kansas of contributions to the Kansas Universal Service Fund, preparation for a Lifeline site visit by Universal Service Administrative Company personnel, the first time preparation and filing of a new ETC annual certification report in the State of Iowa, fielding and responding to data requests for the State of Oklahoma around proposed expansion of U.S. Cellular's ETC area.

7. Additionally, our regulatory accounting and compliance division had been understaffed throughout late 2007 and early 2008 due to a sudden departure of a key staff member. A new staff member, who had no previous regulatory accounting or compliance experience, had been hired into the organization in mid-February 2008. During the time period that the overlooked certification filings were to be filed, I and other members of U.S. Cellular's regulatory accounting and compliance organization were committing significant time and effort to train the new staff member as to organizational processes and the unique issues, processes and requirements related to regulatory filings.

8. Because the USAC audit and the other projects listed above were unexpected and on an urgent basis, we devoted substantially all of our limited resources to carrying them out and failed to make the certification filings with the initial line count filings.

9. I did not discover the omission until late June, when USAC published the initial payment amounts on its online disbursement tracking tool and I noticed that the initial payments would not include IAS or ICLS. Upon discovery of the omission, I immediately filed the certifications on June 26, 2008. (See attached.)

10. U.S. Cellular is taking steps to ensure line counts and other filings are made in a timely manner should similar circumstances arise in the future. Specifically, the company has set automated calendar reminders to provide early notice of upcoming deadlines. We have also

arranged for outside counsel to provide e-mail reminders of upcoming filing deadlines. Finally, I am training another employee to assist with the preparation, submission, and tracking of line count and certification filings made with USAC and the FCC. With these measures in place, the Company is confident that line counts and other filings will continue to be made in a timely manner should future disruptions arise.

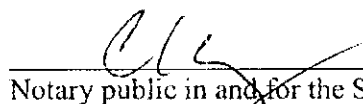
11. This concludes my Declaration.

I declare under penalty of perjury that the foregoing is true to the best of my knowledge, information, and belief.

Executed on July 18, 2008

  
\_\_\_\_\_  
Jeffrey Sorensen

SUBSCRIBED AND SWORN to before me this 16th day of July, 2008.

  
\_\_\_\_\_  
Notary public in and for the State of Illinois

My Commission Expires: May 31 2010

